

RESOLUTION NO. LPIC 2002-02

A RESOLUTION OF THE LODI PUBLIC IMPROVEMENT CORPORATION  
RELATING TO ELECTRIC SYSTEM REVENUE CERTIFICATES OF  
PARTICIPATION; APPROVING THE FORMS OF AND AUTHORIZING THE  
EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED ELECTRIC  
ENERGY PURCHASE AGREEMENT AND A TRUST AGREEMENT IN  
CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER  
MATTERS RELATED THERETO

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WHEREAS, the City of Lodi, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), has established the Electric System (capitalized terms used herein and not otherwise defined shall have the meanings given such terms pursuant to Section 1.01 of the Trust Agreement referred to below) to serve the inhabitants of the City; and

WHEREAS, pursuant to the Public Utilities Code of the State, the City is authorized to acquire, own, control, sell or exchange rights of every nature for the purpose of operating the Electric System; and

WHEREAS, in order to assure adequate electricity to satisfy the expected load requirements of the inhabitants of the City, the City entered into the Original Agreement with Calpine providing for the purchase by the City of the Energy for the term of the Original Agreement; and

WHEREAS, pursuant to the Original Agreement, the City was obligated to take and pay for the Energy as delivered, resulting in the City's obligation to make installment purchase payments to Calpine in the amounts and at the times determined pursuant to the Original Agreement; and

WHEREAS, the City and Calpine have entered into the Amendment (the Original Agreement as amended and supplemented by the Amendment being herein referred to as the "Amended Agreement") pursuant to which the Original Agreement has been amended and supplemented to provide for three Parts, with the Original Agreement constituting Part II; and

WHEREAS, the City has sold its interests in the Energy to Calpine, and Calpine purchased the City's interests in the Energy, on the terms and conditions set forth in the Part III of the Amended Agreement; and

WHEREAS, pursuant to Part III of the Amended Agreement, the City and Calpine agreed upon the purchase price for the City's interests in the Energy and also agreed to net the payments due from the City for its purchase of the Energy from Calpine pursuant to the Original Agreement against the payments due from Calpine for its purchase of the City's interests in the Energy pursuant to Part III of the Amended Agreement, resulting in an obligation of the City to make certain installment payments to Calpine (the "Original Installment Payments"); and

WHEREAS, the City and Calpine agreed in Part III of the Amended Agreement that the Original Installment Payments were to be paid from Net Revenues of the City's Electric System; and

WHEREAS, Part I of the Amended Agreement provided the Lodi Public Improvement Corporation, a nonprofit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation") with the option to purchase all of Calpine's right, title and interest in and to Part III thereof, including the right to collect the Original Installment Payments; and

WHEREAS, the Corporation intends to exercise said option and acquire all of Calpine's right, title and interest in and to Part III to the Amended Agreement, including the right to collect the Original Installment Payments; and

WHEREAS, in order to facilitate the Corporation's financing of its acquisition of Calpine's right, title and interest in and to Part III of the Amended Agreement, to modify the Original Installment Payments as requested by the City, to conform the covenants and agreements of the City with respect to the Electric System and the Revenues with outstanding Parity Obligations of the City and to simplify the agreement between the City and the Corporation with respect to Part III of the Amended Agreement, the City and the Corporation have determined to amend and restate Part III of the Amended Agreement as provided in the Amended and Restated Electric Energy Purchase Agreement (the "Agreement"), dated as of November 1, 2002, between the City and the Corporation; and

WHEREAS, pursuant to the Agreement, the City will be obligated to make the Installment Payments to the Corporation from Net Revenues in the amounts, on the dates and on the terms and conditions set forth in the Agreement; and

WHEREAS, the Corporation desires to finance its acquisition of Calpine's rights in and to Parts I and III of the Amended Agreement with the proceeds of the sale of the Electric System Revenue Certificates of Participation, 2002 Series C (the "Series C Certificates") and Electric System Revenue Certificates of Participation, 2002 Taxable Series D (the "Series D Certificates" and collectively with the Series C Certificates, the "Certificates"), evidencing and representing proportionate interests of the owners thereof in the Installment Payments to be made by the City pursuant to the Agreement; and

WHEREAS, the Certificates are to be executed and delivered pursuant to a Trust Agreement (the "Trust Agreement"), proposed to be executed by the Corporation and BNY Western Trust Company (the "Trustee") pursuant to which the Corporation shall assign all of its rights in and to the Agreement to the Trustee; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner, and the Corporation is now duly authorized and empowered, to consummate such transactions, for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS THE LODI PUBLIC IMPROVEMENT CORPORATION, AS FOLLOWS:

Section 1. The Board of Directors of the Corporation hereby specifically finds and determines it is desirable and furthers the Corporation's public purpose to assist the City by acquiring Calpine's right, title and interest in Part III of the Amended Agreement and entering into the Agreement with the City through the actions authorized hereby and that the statements, findings and determinations set forth above and in the preambles of the documents approved herein are true and correct.

Section 2. The Agreement, proposed to be executed and entered into by and between the City and the Corporation, in the form presented at this meeting and on file with the Secretary of the Corporation, and the performance by the Corporation of its obligations under the Agreement as executed and delivered in accordance with this Resolution are hereby approved. The President and the Treasurer of the Corporation, each acting singly, are hereby authorized and directed, for and in the name and on behalf of the Corporation, to execute and deliver to the City the Agreement in substantially said form, with such changes therein as such officer executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The Trust Agreement, in the form presented at this meeting and on file with the Secretary of the Corporation, and the performance of by the Corporation of its obligations under the Trust Agreement as executed and delivered in accordance with this Resolution are hereby approved. The President or the Treasurer of the Corporation, each acting singly, are hereby authorized and directed, for and in the name and on behalf of the Corporation, to execute and deliver to the Trustee the Trust Agreement in substantially said form, with such changes therein as the such officer executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof, provided, that the aggregate principal amount of the Certificates to be executed and delivered thereunder shall not exceed \$45,000,000, the final principal payment date of the Certificates shall be not later than 35 years from their date of delivery, and the net interest cost of the Certificates shall not exceed eight percent per annum.

Section 4. The Secretary of the Corporation is hereby authorized and directed to attest the signatures of the President and the Treasurer of the Corporation, as may be required or appropriate, in connection with the execution and delivery of the Agreement and the Trust Agreement.

Section 5. The officers of the Corporation are hereby severally authorized and directed to do any and all things (including the negotiating and obtaining of a municipal bond insurance policy or reserve fund surety bond with respect to the Certificates if the City Manager or Finance Director of the City determine that such insurance policy or surety bond will result in savings to the City) and to execute and deliver any and all documents which they may deem necessary or desirable in order to consummate the transactions authorized hereby and to consummate the sale, execution and delivery of the Certificates and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Agreement, the Trust Agreement and the Certificates; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 6. This Resolution shall take effect immediately upon its passage.

Dated: October 22, 2002

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I hereby certify that the foregoing is a full, true and correct copy of Resolution No. LPIC 2002-02 duly passed and adopted by the Board of Directors of the Lodi Public Improvement Corporation at a meeting thereof duly held on the 22<sup>nd</sup> day of October, 2002, by the following vote of the Directors thereof:

AYES: DIRECTORS – Hitchcock, Howard, Land, Nakanishi, and President  
Pennino


NOES: DIRECTORS – None

ABSENT: DIRECTORS – None

ABSTAIN: DIRECTORS – None

  
Susan J. Blackston  
Secretary for the Corporation

Approved As to Form:

  
Randall A. Hays  
Attorney for the Corporation

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